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No. 351

Supreme Court of the United States

OCTOBER TERM, 1947.

CONSOLIDATED MACHINE TOOL CORPORATION,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SECOND CIRCUIT

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In its Petition for a Writ of Certiorari and in Point II of its original brief in support of said Petition herein, Consolidated Machine Tool Corporation raised the issue of the effect of the Labor Management Relations Act of 1947 upon this case. In the brief in opposition on behalf of the National Labor Relations Board (point 3) it is assumed that only one provision of the Labor Management Relations Act is involved, namely the requirement that a labor organization file certain financial reports and other data and that its officers file so-called non-communist affidavits. That is not the fact.

Section 8(c) of the Labor Management Relations Act provides, in substance, that the expressing of any views, argument, or opinion shall not constitute or be evidence of an unfair

labor practice if such expression contains no threat of reprisal or force or promise of benefit.[1] An examination of both the Company's original brief and the brief in opposition herein will demonstrate conclusively that the findings of unfair labor practices herein were based upon expressions of views, arguments, and opinion, none of which contained any threat of reprisal or force or promise of benefit. Under Section 10(f) of the Act this Court must determine on review whether the findings of the Board with respect to questions of fact are supported "by substantial evidence on the record considered as a whole".

In other words, regardless of whether or not the specific statements found to have been made by or on behalf of the Company herein were properly considered evidence of unfair labor practices at the time of the Board hearing herein, under the Labor Management Relations Act of 1947 such statements are not now prohibited nor can they be evidence of unfair labor practices. As shown in Point II of the original brief in support of the Petition herein, this Court should dispose of the questions before it according to the law now prevailing.

Public Utility Commissioners vs. Compania General De Tobacas, 249 U. S. 425, 426; 63 L. Ed. 687, 688.

Duplex Printing Press Company vs. Deering, 254 U. S. 443, 464; 65 L. Ed. 349, 356.

Texas Company v. Brown, 258 U. S. 466, 473; 66 L. Ed. 721, 725.

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[1]Section 8(c) reads in its entirety as follows: "The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

American Steel Foundries vs. Tri-City Central Trades Council, 257 U. S. 184, 201; 66 L. Ed. 189, 196.

Ziffrin vs. United States, 318 U. S. 73, 78; 87 L. Ed. 621, 625.

Dinsmore v. Southern Express Company, 183 U. S. 115, 120; 46 L. Ed. 111, 113.

In this case the Company is ordered to cease and desist from certain practices and to bargain upon request with a labor organization. This order operates in futuro, and the right to it must be determined as of the present time. The order to bargain was issued upon a finding that, although the labor organization involved admittedly no longer represents a majority of the employees in the bargaining unit, the loss of majority representation was occasioned by the Company's unfair labor practices (See point 2 of brief in opposition). But since the date when that order was issued the law has been changed, and even if the specific acts charged were then properly considered unfair labor practices, they no longer are.

A question of vital public importance is involved here. Unless this Court grants certiorari, the Company may be obliged in the future to bargain with a labor organization on behalf of employees who do not wish to be represented by that organization and whose desires in that respect were not influenced by any action on the part of the Company that constitutes an unfair labor practice under the Labor Management Relations Act of 1947. The effect of the Labor Management Relations Act upon proceedings pending at the time of its passage is directly raised.

For the reasons stated in the original brief in support of the Petition herein, and for the reasons set forth above, it is

respectfully submitted that this case is a proper one for review by this Court and that the petition for a writ of certiorari should be granted.

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